

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

TONY CLINGINGS,

Plaintiff,

Civil No. 09-194-HA

v.

ORDER

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

HAGGERTY, District Judge:

Plaintiff was the prevailing party in this action and his counsel seeks an award of attorney fees pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, in the amount of \$10,720.67. Defendant Commissioner agrees that attorney fees should be awarded in this case, but objects to the number of hours plaintiff's counsel has claimed (61.85). The Commissioner argues that plaintiff's counsel's briefing was excessive because this court remanded on only two of the five issues briefed by counsel.

Although the Commissioner relies on *Hardisty v. Astrue*, 592 F.3d 1072 (9th Cir. 2010), this court finds it inapplicable to the facts of this case. Unlike in *Hardisty*, plaintiff does not

request that this court determine whether the Commissioner's position was substantially unjustified regarding the three issues not addressed in my substantive opinion. *See Hardisty*, 592 F.3d at 1079 (holding that the EAJA does not require the district court to review the issues raised by the plaintiff, but not addressed in the court's remand, in determining whether the government's position was substantially unjustified to warrant a fee award). Instead, the Commissioner concedes that its position was substantially unjustified and asks the court to reduce plaintiff's counsel's hours. After reviewing the record and the work undertaken by counsel, this court declines to find that plaintiff's counsel's briefing was excessive.

This court also rejects the Commissioner's assertion that the issues in this litigation were not excessively complex to warrant the hours plaintiff's counsel expended. The Commissioner's request that forty-two hours be deemed reasonable in this case is rejected.

CONCLUSION

This court concludes that plaintiff's counsel's Application for Fees [29] is granted as follows: it is ordered that attorney Tim Wilborn be paid \$10,720.67 upon verification that plaintiff has no debt to the government which qualifies for offset against the awarded fees. *See Astrue v. Ratliff*, __ U.S. __, 130 S. Ct. 2521, 2527 (2010) (subjecting EAJA awards fees "to a federal administrative offset if the litigant has outstanding federal debts.").

If plaintiff has such debt, then payment for any remaining funds after offset of the debt shall be made to plaintiff's attorney.

IT IS SO ORDERED.

DATED this 20 day of October, 2010.

/s/ Ancer L. Haggerty
Ancer L. Haggerty
United States District Judge